

Recording Requested By:

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RECORDED AT REQUEST OF  
Founders Title Company

When Recorded, Mail To:

Department of Toxic Substances Control  
Enforcement and Program Support Division  
Technical Services Branch  
Allen K. Wolfenden, Chief  
400 P Street, 4th Floor  
Mail: P.O. Box 806  
Sacramento, California 95812-0806

COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY  
(North Country Squires)

This Covenant and Agreement ("Covenant") is made on the 12th day of December, 19 91 by Lyon Communities Inc. ("Covenantor"), who is the owner of record of certain property situated in, Lathrop, County of San Joaquin, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by the California Department of Toxic Substances Control, with reference to the following facts:

- A. The Property is located adjacent to the Defense Logistics Agency, Defense Distribution Region West, Sharpe Site, formerly known as the Sharpe Army Depot. The Defense Logistics Agency, Defense Distribution Region West, Sharpe Site has identified areas of soil and ground water contamination, and is listed on the Department's Expenditure Plan for the Hazardous Substances Cleanup Bond Act of 1984, revised January 1990.
- B. The ground water contamination from Defense Logistics Agency, Defense Distribution Region West, Sharpe Site has migrated off site, and is under portions of the Property. Volatile and semivolatile organic compounds, arsenic and the herbicide bromacil have been identified in the ground water underneath portions of the Property. Volatile compounds (carbon tetrachloride; chloroform; trans 1,2-dichloroethene; trichloroethene; and tetrachloroethene) have also been detected in the soil-gas on the Property.
- C. Covenantor desires and intends that in order to protect the present or future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous wastes which has

been deposited on or under the Defense Logistics Agency, Defense Distribution Region West, Sharpe Site, or which have migrated from the Defense Logistics Agency, Defense Distribution Region West, Sharpe Site.

## ARTICLE I

### GENERAL PROVISIONS

1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Section 25222.1 of the Health and Safety Code and run with the land pursuant to Section 25230. Each and all of the Restrictions are enforceable by the Department of Toxic Substances Control Program.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agency, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

## ARTICLE II

### DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

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2.03 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

### ARTICLE III

#### DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Owner promises to restrict the use of the portion of the Property as described in Exhibit A as follows:

- 1) No owner or occupant of this Property shall extract, utilize, consume or permit to be extracted any water from below the surfaces of the ground without prior approval from the San Joaquin County Public Health Services and the Department of Toxic Substances Control.
- 2) All water utilized within this Property for any purpose shall be obtained from a municipal water source, unless approval from the San Joaquin Public Health Services and the Department of Toxic Substances Control is obtained.
- 3) No owner or occupant shall dig, create, or utilize a septic tank or any other subsurface waste disposal system without prior approval from the San Joaquin Public Health Services and the Department of Toxic Substances Control.
- 4) Prior to construction on this Property, all existing domestic and irrigation supply wells shall be abandoned pursuant to all applicable state and local regulations. However, ground water wells, extraction systems, and associated equipment used for monitoring or other activities required for remediation by the Defense Logistics Agency, Defense Distribution Region West, Sharpe Site, or its agents or successors, shall remain intact and access shall not be denied.
- 5) No owner or occupant of this Property shall hinder, prevent or permit the prevention of, required remediation efforts deemed necessary by state or federal agencies to remove ground water contamination from under the Property.

3.02 Conveyance of Property. The Owner or Owners shall provide a thirty (30) days advance notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the

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Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.03 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to enforce civil and criminal actions against the Owner as provided by law.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous waste or is within 2,000 feet of land that contains hazardous waste. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

#### ARTICLE IV

##### VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233, Health and Safety Code.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234, Health and Safety Code.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

## ARTICLE V

### MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: Lyon Communities, Inc.  
1631 North First  
Suite 100  
San Jose, California 95112

Copy to: Department of Toxic Substances Control  
Enforcement and Program Support Division  
Technical Services Branch  
Allen K. Wolfenden, Chief  
400 P Street, 4th Floor  
Mail: P.O. Box 806  
Sacramento, California 95812-0806

5.03 Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

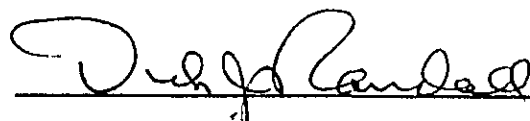
5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Director, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of San Joaquin within ten (10) days of the date of execution.

5.06 References. All references to Code sections include successor provisions.

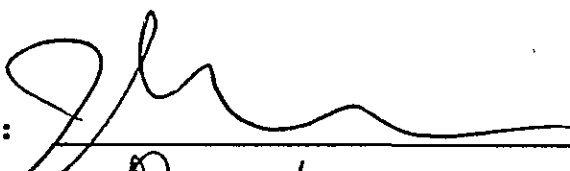
IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNERS

By:   
Title: President

Date: 12-19-91

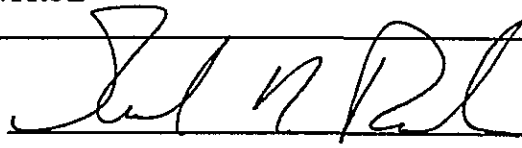
Dick J. Randall  
LYON COMMUNITIES, INC.

By:   
Title: President

Date: 12-16-91

John T. Verner  
VERNER CONSTRUCTION, INC.

DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL

By:   
Title: ACTING DEPUTY DIRECTOR

Date: DEC 12, 1991

Ted N. Rauh  
TOXIC SUBSTANCES CONTROL

STATE OF CALIFORNIA

COUNTY OF

Sacramento

On December 12, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared Theodore N. Rauh, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Ted N. Rauh, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Paulette A. Lathan  
Notary Public in and for said  
County and State

STATE OF CALIFORNIA

COUNTY OF

Santa Clara

SS.

On this 19th day of December, in the year  
1991, before me, the undersigned, a Notary Public in  
and for said County and State, personally appeared  
Dick J. Randall personally known  
to me (or proved to me on the basis of satisfactory evidence) to be the  
\_\_\_\_\_  
President, and

personally known to me (or proved to me on the basis of satisfactory  
evidence) to be \_\_\_\_\_  
Secretary of the corporation that executed the within Instrument, and  
acknowledged to me that such corporation executed the within instru-  
ment pursuant to its by-laws or a resolution of its board of directors.

Signature

Lani Pearl Thielmann

Name (Typed or Printed)

Notary Public in and for said County and State

F. 2467 R. 11/82



(This area for official notarial seal)

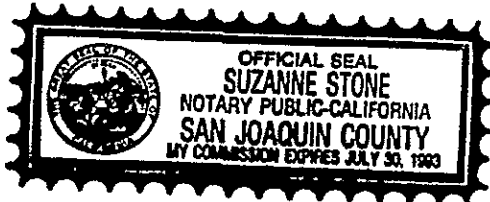
CHICAGO TITLE  
CORPORATION

STATE OF CALIFORNIA )

COUNTY OF San Joaquin )

On December 12<sup>th</sup>, 1991 before me, the undersigned,  
a Notary Public in and for said state, personally appeared  
John F. Verner, personally known to me or proved to  
me on the basis of satisfactory evidence to be the person who  
executed the within instrument as President, of the  
corporation that executed the within instrument, and acknowledged  
to me that such corporation executed the same pursuant to its  
bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Suzanne Stone

Notary Public in and for said  
County and State



STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

On DECEMBER 27, 1991 before me, the undersigned, a Notary Public in and for said state, personally appeared TED N. RAUH, personally known to me or provided to me on the basis of satisfactory evidence to be the person who executed the within instrument as ACTING DEPUTY DIRECTOR, of the Department of Toxic Substances Control, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

Nancy L. Lentsch  
Notary Public in and for  
Said County and State

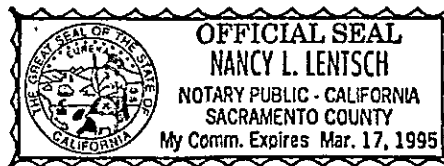


EXHIBIT A

DESCRIPTION NORTH COUNTRY SQUIRES

All that certain real property situate, lying and being in the County of San Joaquin, State of California, as follows:

All that fractional portion of Section 14, Township 1 South, Range 6 East, Mount Diablo Base and Meridian and described with reference to that certain Record of Survey, filed for record in Book 30 of Surveys, Page 108, San Joaquin County Records, more particularly described as follows:

Commencing at the corner common to Sections 11, 12, 13, and 14, Township 1 South, Range 6 East, Mount Diablo Base and Meridian; thence South  $87^{\circ}32'55''$  West 463.68 feet; thence South  $0^{\circ}18'44''$  West 2,197.92 feet to the northeast corner of aforesaid Record of Survey; thence continuing South  $0^{\circ}18'44''$  West along the easterly line of said Record of Survey and the westerly line of the Southern Pacific Transportation Company 400 feet wide Congressional Grant, a distance of 2,466.39 feet to the northeast corner and the True Point of Beginning of the Parcel herein described; thence South  $0^{\circ}18'44''$  West along the easterly line of said Record of Survey and the westerly line of the Southern Pacific Transportation Company, a distance of 638.37 feet to a point on the northerly side of 40 feet wide Squires Road; thence North  $89^{\circ}03'30''$  West along the northerly side of Squires Road, a distance of 2,281.18 feet; thence North  $9^{\circ}31'43''$  East 298.60 feet; thence North  $89^{\circ}09'45''$  West 32.03 feet; thence North  $11^{\circ}02'22''$  East 299.89 feet; thence North  $89^{\circ}57'33''$  East 2,209.47 feet to the Point of Beginning.

Containing 31.423 acres more or less.